

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM JACOB SMITH,
Plaintiff,

No. 1:08-cv-661

-v-

HONORABLE PAUL L. MALONEY
HONORABLE JOSEPH G. SCOVILLE

KURT JONES, et al.,
Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION OVER OBJECTION

This matter comes before the Court on a Report and Recommendation (Dkt. No. 56) issued by the Honorable Joseph G. Scoville, United States Magistrate Judge. Plaintiff Smith, a prisoner under the control of the Michigan Department of Corrections (MDOC), filed a motion (Dkt. No. 53) for a preliminary injunction requesting he be transferred back to the Kinross Correctional Facility (KCF). Plaintiff offered two reasons for the requested transfer: (1) Plaintiff was receiving help with his pleadings from another prisoner at KCF and (2) Plaintiff thought he would be safer at KCF. Magistrate Judge Scoville recommends denying the motion. Plaintiff filed this objection.

After being served with a Report and Recommendation issued by a Magistrate Judge, a party has ten days to file written objections to the proposed findings and recommendations. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). A district court judge reviews de novo the portions of the R&R to which objections have been filed. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b). Only those objections that are specific are entitled to a de novo review under the statute. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curiam) (holding the district court need not provide de novo review where the objections are frivolous, conclusive or too general because the burden is on the parties to “pinpoint those portions

of the magistrate's report that the district court must specifically consider"). The United States Supreme Court has held that the statute does not "positively require[] some lesser review by the district court when no objections are filed." *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file an objection results in a waiver of the issue and the issue cannot be appealed. *Sullivan*, 431 F.3d at 984. *See also Arn*, 474 U.S. at 155 (upholding the Sixth Circuit's practice). The district court judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b).

Plaintiff alleges several factual errors in the Report and Recommendation. Assuming, for the sake of argument only, Plaintiff is correct on his factual objections, Plaintiff is still not entitled to his request for a transfer. Upon review of Plaintiff's motion, relevant law, and the Report and Recommendation, this Court finds Magistrate Judge Scoville's analysis sound and well reasoned. Plaintiff has not demonstrated a likelihood of success on the merits of his claim, has not established an irreparable injury, and the issuance of the preliminary injunction would constitute unwarranted federal court intervention with the State's operation of its prisons.

Accordingly, **IT IS HEREBY ORDERED**,

1. The Report and Recommendation (Dkt. No. 56) is **ADOPTED** over objections, and
2. Plaintiff Smith's motion (Dkt. No. 53) for preliminary injunction is **DENIED**.

Date: May 11, 2009

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge